

# **Notice Of Intent To Act Upon Regulations**

## **Notice of Hearing for the Adoption of Regulations of the State Environmental Commission**

The State Environmental Commission (SEC) will hold a public hearing at 10:00 A.M. on Thursday, August 19, 2004, at 401 North Carson Street, Carson City, NV (i.e., The Laxalt Building). The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of the following regulatory petitions. If a person that may be directly affected by a proposed action does not appear and request time to make an oral presentation at the above referenced hearing, the SEC may proceed immediately to act upon any of the following regulatory petitions or other written submissions described in this notice.

### **Air Pollution Control**

#### **(1) Petition 2004-22 – LCB File No. R 125-04: New Source Review (NSR), Prevention of Significant Deterioration (PSD) rule, Ozone Nonattainment rule, and Minor Revision of Permit:**

This regulatory petition amends NAC 445B.001-.3497. The regulation incorporates revisions to the federal New Source Review (NSR) and Prevention of Significant Deterioration (PSD) rule. The regulation also incorporates revision to certain permitting provisions for a major stationary source and/or a major modification in a basic nonattainment area for ozone. As well, the regulation integrates new federal NSR Reforms into State regulations for PSD sources. This is necessary to ensure consistency with the federal program and to ensure the State of Nevada's ability to implement these new provisions. The ozone nonattainment amendments are necessary as a result of new 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. On April 30, 2004 the US EPA published nationwide attainment/nonattainment designations for the 8-hour ozone NAAQS. This designation were effective June 15, 2004. The proposed regulations provide specific criteria for new major stationary sources that are locating in, or for sources making major modifications in, an area designated as nonattainment for the 8-hour ozone standard.

The regulatory petition applies only to major stationary sources of air pollution. The NSR Reforms would affect approximately 12 facilities. By adopting the proposed changes, NDEP will be able to regain full delegation of the PSD program in Nevada from the US EPA. Once NDEP has received full delegation, affected sources wishing to apply for permits for new facilities or modifications to their existing facility will be able to work directly with the state rather than having to go through the US EPA to receive permit approvals. Specific fees are proposed to cover costs associated with implementing the NSR flexibility provisions. These costs will be born by the sources requesting any of the new NSR reforms at the time they modify their existing permit.

This regulatory petition also contains language that (a) updates certain definition in the regulations, and (b) will shorten the timeline for processing minor revisions to Class I operating permits. Specifically, the regulation streamlines the public notification provisions of NAC 445B.3425 and removes definitions that are no longer used in NAC 445B. The regulation removes duplicate requirements for public notification and participation in cases where (a) the Director drafts proposed conditions for an operating permit because the applicant's proposed conditions were not adequate, and (b) the Administrator of the U.S. EPA objects to the proposed revision, and the Director subsequently revises the proposed revision.

The provision contained in this regulation will have no adverse economic impacts on the regulated industry. Accordingly, the proposed regulation would have no direct economic effect on the public, it does not overlap or duplicate any regulations of other state or government agencies, and it is no more stringent than what is established by federal law.

### **Water Quality Planning**

**(2) Petition 2004-16 – LCB File No. R061-04: Certification of Environmental Laboratories:** This regulatory petition proposes the repeal of existing regulations and adoption of new revised regulations. The petition repeals Nevada Administrative Code (NAC) 445A.055 through 445A.067 and adopts NAC 445A.0552 to NAC 445A.067, (i.e., Certification of Environmental Laboratories). The authority for these regulations are defined under Nevada Revised Statutes (NRS) 445A.425, 445A.428.

Currently, the regulations for certification of laboratories to analyze substances in water – as per the Federal Clean Water Act and the Federal Safe Drinking Water Act – are split between the Nevada Division of Environmental Protection (NDEP) and Nevada State Health Division. After the last biennium, the laboratory certification program was moved from the State Health Division to the NDEP. In part, this regulatory petition is needed to make the necessary language adjustments in the NAC's to accommodate this change. Specifically, the new regulations retain the provisions previously established for certification of laboratories to analyze substances in wastewater, while adding provisions for laboratories to analyze substances in drinking water; the latter provision was previously administered by the Health Division. In addition, authority to certify laboratories to analyze substances in accordance with the Federal Resource Conservation and Recovery Act (RCRA) has now been acquired by the NDEP – per Senate Bill 58, NRS 445A.425, 445A.428. Hence, the new revised regulations add provisions for laboratories to analyze environmental samples for hazardous waste substances.

The regulatory petition will have only marginal economic effects and may include a slightly higher cost for some laboratories. Small laboratories will be less affected than the larger laboratories. A poll of the laboratories affected indicates that none of the in-state laboratories consider the change in fees to present a hardship, and respondents indicated a beneficial effect from the RCRA certification program. The new regulations will enable in-state laboratories to demonstrate RCRA certified status so they can participate in certain contracts. The lack of a certification program for RCRA has resulted in out-of-state laboratories obtaining an inordinate amount of RCRA work in Nevada.

The economic effects of the proposed regulations to the public would be of no consequence. In fact, the public should experience both a short-term and long-term benefit due to the improved quality of data obtained with the certification program in effect. The public should also see more competition between laboratories which may in turn stabilize costs associated with laboratory analysis. Agency costs to implement the proposed regulations would not be negatively affected; that is, the more participation in the lab certification program, the more fees will be obtained to fund the agency operations. The net effect would be the addition of one full time Laboratory Certification Official and a half time Administrative Assistant. The proposed regulations also do not overlap any existing state or federal regulations.

Regarding fees, the new regulations do contain changes in the fee structure for participating laboratories. The changes would better balance the wastewater and drinking water programs based upon actual time and effort required to administer the programs as well as support the RCRA

certification program. These fees have been coordinated so that equivalent activities among the three program areas will be proportionally cost allocated. The new fee structure will generate an additional \$92,000.00 per year. These funds will support operational costs of the laboratory certification program as well as support a third certification officer and a part-time administrative assistance.

### **Water Pollution Control**

**(3) Petition 2004-15 – LCB File No. R063-04: Treated Effluent:** This Petition is an amendment to the regulations governing the use of treated effluent; NAC 445A. 275 – 280. Specific amendments include restructuring the titling of the effluent categories, adding additional uses of treated effluent beyond irrigation, adding some definitions, and modifying the aerosol control regulation.

This regulatory amendment is needed to allow a wider use of treated effluent in the environment. Over the past decade the quality of treated effluent has significantly improved. The higher quality of effluent now allows increased uses of treated effluent for a variety of applications including cooling water, water features, street washing, etc. In addition, the demand for the use of treated effluent has increased over the last ten years as the State's urban areas continue to grow and water supplies become consumed. To allow for new applications of treated effluent, the above referenced regulations must be amended.

This regulatory amendment also proposes to make two word changes to the **pretreatment regulations** defined under Nevada Administrative Code (NAC) 445A.257. The amendment would strike the requirement for the Division of Environmental Protection (Division) to administer a pretreatment program for municipalities and industrial users that do not have an approved pretreatment program. The revision would allow the Division the option to administer a pretreatment program in cases where a municipality does not have an approved pretreatment program.

At this time the Division does not have a delegated program to operate the pretreatment program from the U.S. EPA. Therefore, the necessary resource funding from the U.S. EPA has not been awarded to the Division in order to effectively staff a pretreatment oversight program. This revision will provide the Division the flexibility to administer a pretreatment program in the future on a case by case basis.

This regulatory amendment will not have a negative economic impact, either immediate or long term, on the regulated industry or the public. In the case of treated effluent, the cost of such effluent is generally lower than potable water, hence industry will likely see an economic benefit from the adoption of this regulatory amendment. There will not be any additional costs to the agency for enforcement of the proposed regulation and the amendments will not overlap or duplicate any regulations of other state federal or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

**(4) Petition 2004-18 – LCB File No. R079-04 Concentrated Animal Feed Operations (CAFO):** This regulatory petition proposes changes to the discharge permits and general permitting provisions of NAC 445A – Water Controls. The regulation amendments focus exclusively on defining and permitting concentrated animal feeding operations (CAFO). The regulations will revise the list of production facilities that are defined as potential CAFOs as well as adjust the animal threshold numbers at a facility to be defined as a CAFO. The regulations will also improve consistency between the State and federal CAFO definitions, eliminate the mixed animal calculation, require a

designated CAFO to apply for a discharge permit within ninety days of designation, and create a \$700 CAFO general permit application and annual fee.

This regulatory petition will amend the Nevada Administrative Code to conform with revisions to the federal National Pollutant Discharge Elimination System (NPDES) regulations. In 1975, the US Environmental Protection Agency (US EPA) approved the State NPDES permit program and delegated NDEP's permitting authority to the State. To maintain this delegation, the State must adopt regulations that are at least as stringent as the federal regulations. On February 12, 2003, the US EPA promulgated a revised NPDES permit regulation and effluent limitation guidelines and standards for CAFOs. This regulatory petition will raise the Nevada NPDES program to the minimum standards to maintain delegation.

The regulations are not expected to increase the number of facilities requiring CAFO permits. The Division has not identified any newly defined production facilities, (e.g. immature swine, lambs, ducks, or chickens) that are large enough to be classified as CAFOs under the proposed regulations. There are no CAFOs permitted under the mixed animal calculation, therefore, the number of permits will not change as a result of the elimination of this calculation. The Division has the authority to require a permit of any agricultural or silvicultural activity that has been identified as a significant contributor of pollution. The proposed regulations will establish a ninety-day deadline from the date of notification for a designated facility to apply for a permit. Although higher than the current general permit fee, the proposed \$700 application and annual CAFO general permit fees are lower than the permit fees for an individual CAFO permit.

The proposed regulation will not have any negative economic impacts, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of this regulation. The majority of the Bureau of Water Pollution Control operating budget is funded through permit fees. Due to the small number of CAFOs in the State, a higher CAFO general permit fee will be required to fund the implementation of a CAFO general permit program. The regulation does not overlap or duplicate any regulations of other state or government agencies and the amended regulations are no more stringent than what is established by federal law.

**(5) Petition 2004-17 – LCB File No. R103-04 Underground Injection Control (UIC):** This regulation proposes changes to the permitting provisions of NAC 445A.825 through 445A.910 – Underground Injection Control (UIC). The Underground Injection Control Program is designed to protect underground sources of drinking water by ensuring injection of fluids through a well do not degrade waters of the State. The proposed amendments to these regulations are necessary due to the conflicts with the federal rule 40 CFR 144. In addition the regulations are needed to increase fees for the first time in fourteen (14) years to provide for future staffing increases and ensure the program is fiscally stable.

Specifically, the revised regulations will generate minor increases in permit fees for underground injection control permits including creation of new permit fee categories for general and individual permits. The regulations will also clarify injection activities relating to treated effluent; change language to ensure the state regulations are as stringent as existing federal rules (40 CFR 144); and remove language related to suspension of UIC permits.

While the proposed regulation generates new fees and increases existing fees, these fee increases will have little significant economic impact, either immediate or long term, on the regulated industry and/or the small businesses sector. There will be no additional costs to the agency for enforcement

of these regulations, they are not more stringent than federal regulations, nor do they overlap or duplicate any regulations of other state or government agencies.

### **Corrective Actions**

**(6) Petition 2004-19 – LCB File No. R084-04 Brownfields Cleanup Revolving Loan Fund:** This regulatory petition proposes adoption of regulations governing the administration of a Brownfields Cleanup Revolving Loan Fund. The Nevada Division of Environmental Protection (NDEP) has received grant funding from the US Environmental Protection Agency (US EPA) to administer the fund. Funds will be used to address environmental cleanups conducted at Brownfield sites in Nevada. Brownfield sites, as defined in the federal “Small Business Liability Relief and Brownfields Revitalization Act,” mean real property, the expansion, redevelopment, or reuse of which may be complicated by the presence of a hazardous substance, pollutant, or contaminant. Funds awarded to the NDEP are to be used to make low-interest loans to individuals or municipalities for the cleanup of these sites; a portion of the funds received may also be used to offer sub-grants to municipalities or non-profit groups. The proposed regulation, drafted pursuant to NRS 459.892, has been developed to outline the application requirements for the revolving loan fund.

The proposed regulation will not have any negative economic impacts, either immediate or long term, on the regulated industry. The regulation is intended to off-set the cost of environmental cleanups at contaminated sites to allow for redevelopment or reuse of property. The revolving loan fund will have beneficial economic impacts on property owners and local communities. Loan funds are intended to put underutilized properties back into productive use, thereby increasing tax revenues and employment opportunities.

There will be no additional costs to the agency for enforcement of this regulation. NDEP has entered into an agreement with a private fund manager to administer the revolving loan fund program. Administrative fees are being paid for out of the competitive grant received from the US EPA. Any additional costs to NDEP to oversee the loan and grant program will be paid for with federal funds from the “Small Business Liability Relief and Brownfields Revitalization Act.” The regulation does not overlap or duplicate any regulations of other state or government agencies. Recipients of loan funds will follow existing State regulations governing the cleanup of contaminated sites. The amended regulations are no more stringent than what is established by federal law and NDEP does not anticipate that fees will be imposed on loan or grant recipients for the administration of the fund, though legislation in NRS 459.888 allows for the imposition of such a fee.

### **Public Hearing Process & Information:**

Persons wishing to comment on the proposed actions of the State Environmental Commission (SEC) may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to: State Environmental Commission 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851. Written submissions must be received by the SEC at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SEC may proceed immediately to act upon any written submissions.

A copy of the regulations to be adopted or amended will be on file at the State Library and Archives, 100 Stewart Street, and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 1771 E. Flamingo, Suite 121-A, in Las Vegas, for inspection by members of the public during business hours. In addition, copies of the



regulations and public notices have been deposited electronically at major library branches in each county in Nevada. The text of the proposed regulations are available in the State of Nevada [Register of Administrative Regulations](#), which is prepared and published monthly by the Legislative Counsel Bureau pursuant to [NRS 233B.0653](#). Also, the [State Environmental Commission](#) maintains a website ([SEC.nv.gov](#)) that contains this public notice, the meeting agenda and the proposed regulations pending before the SEC.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on August 11 2004.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this public notice has been posted at the following locations: The Laxalt building in Carson City, the Washoe County Library in Reno, the Clark County Public Library and Grant Sawyer Office Building in Las Vegas, and the Division of Environmental Protection and Department of Museums, Library and Arts in Carson City. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the SEC, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.